

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5103 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NAVIN @ NAVU @ NAVIN PITTAL @ TAL GULABDAS DARUWALA

Versus

STATE OF GUJARAT

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Appearance:

MR DEVANG T SHAH for Petitioner

MR KC SHAH, LD. AGP for Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 8/3/1996 rendered by the 2nd respondent u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds of detention have been placed on

record at page 11. It can be seen therefrom that the detaining authority has placed reliance on 4 pending trial cases registered at Rander Police Station C.R. No.368/93 u/Ss. 147, 148, 149, 307, 384, 427, 452 of the Indian Penal Code read with sec. 25 (c) of the Arms Act read with sec. 3(1) 10 of the Scheduled castes and the Sehcduled Tribes (Prevention of Atrocities) Act, 1989, Athwa Lines Police Station C.R. No. 160/95 u/Ss. 323, 504 and 506 of the IPC, Athwa Lines Police Station C.R. no. 215/95 u/Ss. 323, 504, 506 (2) of the IPC and Athwa Lines Police Station C.R. No. 408/95 u/Ss. 323, 324, 504, 506(2) and 114 of the IPC respectively in respect of the offences alleged to have been committed on 15/9/93, 26/5/95, 21/8/95 and 19/12/1995. Over and above the said criminal cases which are apparently quite old, the detaining authority has also relied on statements of two witnesses in respect of two incidents dated 22/2/1996 and 28/1/1996 disclosing the identity of these witnesses to the detenu invoking provisions o section 9(2) of the PASA Act. Considering this material placed before it, the detaining authority has recorded a finding that the detenu is a "dangerous person" within the meaning of sec. 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the public order, it was necessary to pass the detention order and, therefore, the impugned order of detention order has been passed against the detenu. This order has been subjected to challenge in this petition.

3. I have heard Mr. Devang T. Shah, learned advocate for the petitioner and Mr. K.C. Shah, Ld. A.G.P. for the respondents at length. Mr. Shah submitted a number of contentions to the cause of the petitioner-detenu. However, it would not be necessary to refer to and deal with all these contentions as this petition is required to be allowed only on the ground of non-supply of the copies of the bail applications and the bail orders of the co-accused in so far as Rander Police Station C.R. No. 368/93 is concerned. It is in this connection that ground no. 6.3 sets out the details : Out of the 4 cases, the first one was registered in the month of April 1993 at C.R. No. I 368/93. The Subordinate Authority - Sponsoring Authority has supplied the copy of bail application No. 1385/93 and the order dated 8/10/1993 of the Sessions Court passed on the said application. However, there were inall 9 accused in the said case and while pressing to aforesaid bail application alongwith other co-accused the petitioner relied on the order of the Sessions Court in bail application moved by the other co-accused in the said case. The petitioner had also taken the said ground in his bail, that is to say that

the petitioner also relied upon the ground that the other co-accused was enlarged on bail. This ground was also considered and relied upon by the Sessions Court in its order dated 8/10/1993. It is the case of the petitioner that the copy of the said application bearing No. 1287/93 as well as the copy of the order of the learned Sessions Judge passed on that application were not supplied to the petitioner with other documents. Therefore, the right of the petitioner of making effective representation guaranteed under Art. 22(5) of the Constitution of India is affected. It is also the stand of the petitioner that the relevant material is that held from the detaining authority and, therefore, the satisfaction of the detaining authority is also vitiated. Shortly stated, the copies of the bail applications of the co-accused were not supplied to the detenu as well as to the detaining authority and these were the material documents. The continued detention of the petitioner hence is required to be held illegal and the detenu is required to be released by quashing and setting aside the order of detention.

4. Having gone through the grounds of detention and other documents supplied to the detenu, it has been fairly conceded that the copies of the bail application of the co-accused and the order passed by the Sessions Court for enlarging the co-accused on bail were not supplied by the sponsoring authority to the detaining authority and were also not supplied to the detenu (petitioner herein). It is not in dispute that the petitioner in his bail application relied upon the bail application of the co-accused as also the order of release of the co-accused on bail. As a matter of fact, the petitioner has made a specific mention about his release on bail inter-alia on the ground that other co-accused were released on bail. The learned advocate for the petitioner has placed reliance on a decision of this Court rendered on 1/8/1996 (Coram : K.R. Vyas, J.) in Special Civil Application No. 3661 of 1996, where following observations were made :-

'... The bail applications as well as the bail orders passed in favour of the co-accused are relevant documents and, therefore, copies thereof ought to have been supplied to the detenu. The non-supply of the copies thereof has adversely affected the right of the detenu of making an effective representation against his detention guaranteed under Article 22(5) of the Constitution of India. The Supreme Court in State of U.P. vs. Kamal Kishore Saini, 1988 (1)

SCC 287 has held that bail application filed by the co-accused and the order passed thereon constitute relevant material, which was required to be produced before the detaining authority and the detaining authority was required to apply its mind to such relevant material. When such a relevant material is withheld from the detaining authority, the Apex Court held that the satisfaction of the detaining authority is vitiated inasmuch as the relevant material is kept back from the detaining authority and, therefore, its subjective satisfaction is vitiated.'

5. In reply Mr. K.C. Shah, Ld. AGP submitted that even if the material had been placed before the detaining authority, he would not have changed subjective satisfaction inasmuch as the bail application of the petitioner and the order passed thereon by the Sessions Court were sufficient for having the subjective satisfaction for passing the impugned order of detention. Similar submission was made before the Apex Court in Kamal Kishore's case (supra). This is how the contention appears.

"Against this order the instant appeal has been filed on special leave. The learned counsel appearing on behalf of the State-appellant, did not question before us the validity and legality of the finding of the High Court insofar as it relates to the non-supply of the relevant and vital materials, that is, the statements recorded under Section 161 of the Code of Criminal Procedure so far as ground No. 1 of the order of detention is concerned, to the detenus and also of the non-placement of the application made by the co-accused before the Judicial Magistrate to the effect that the detenus were falsely implicated in the said case as Vijay Pratap Singh was fired at by some unknown assailants and this fact was also mentioned in the bail application made by the detenus before the court and the police report submitted thereon. The only challenge made on behalf of the appellant is to the finding of the High Court to the effect that the incidents referred to in ground Nos. 1 and 2 created only law and order problem and it did not affect public order. In other words, the even tempo of the life of the community has not at all been affected by the said incident. It is relevant to mention in this connection that the

names of the detenus were not mentioned in the FIR in respect of incident in ground No.1 and the basis of their complicity came to be known only in the material found in the course of the investigation. The detenus were supplied only with the copy of the FIR and also extract of the charge-sheet and not the statements under Section 161 of the Code of Criminal Procedure. It is undisputed that the charge-sheet was subsequently submitted in the court and the respondents were furnished with the copies of the statements recorded under Section 161 of the Cr P C long after the passing of the order of detention communicating the grounds of detention. Similarly, with regard to ground No. 3, the application of the co-accused as well as the statement made in the bail application filed on behalf of the detenus alleging that they had been falsely implicated in the same case and the police report thereon, were not produced before the detaining authority before passing of the detention order. The High Court, therefore, was justified in holding that the assertion made in the return that even if the material had been placed before the detaining authority, he would not have changed the subjective satisfaction as this has never been accepted as a correct proposition of law. It is incumbent to place all the vital materials before the detaining authority to enable him to come to a subjective satisfaction as to the passing of the order of detention as mandatory required under the Act. This finding of the High Court is quite in accordance with the decisions of this Court in the case of Asha Devi v. K. Shivraj and S> Gurdip Singh v. Union of India.

The Apex Court dealt with the matter in this respect in para. 15 of the citation and observed :

'Moreover, we have already upheld the finding of the High Court that the order of detention is illegal and bad for non-supply of vital documents to the detenus to enable them to make an effective representation against the grounds of detention and as such their right to make an effective representation as contemplated under Article 22(5) of the Constitution of India has been infringed rendering the impugned order as illegal and bad.'

In my opinion, therefore, the argument of Mr. K.C. Shah, Id. A.G.P. in reply is squarely met with by the decision of the Apex Court in Kamal Kishore's case (supra).

6. In the result the continued detention of the petitioner is required to be held illegal. Order accordingly. The impugned order of detention, therefore, is quashed and set aside. The petitioner-detenu is directed to set at liberty forthwith if his detention is not required for any other purpose or case. Rule made absolute accordingly.

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